IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Leave to Appeal No. 17 of 2006

State & Ganesh Singh Rana

Date of decision :-19.04.2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 19.04.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Leave to Appeal No.17 of 2006

State of Uttaranchal .....Appellant

Versus

Ganesh Singh Rana
S/o Sri Bhoop Singh Rana
R/o village Mohanda P.S. Purola
District Uttarkashi .....Respondent

Sri Nandan Arya learned A.G.A. for the State-appellant.

Hon'ble J. C. S. Rawat, J.

1. The application for leave to appeal has been preferred by the State against the judgment and order dated 4.2.2006 passed by the Addl. Sessions Judge, Haridwar in Special S.T. No.10/2004, whereby the respondent-Ganesh Singh Rana was acquitted from the charge under section 8/15 N.D.P.S. Act.

2. Brief facts of the case are that on the basis of information received from the informer, the police party intercepted the respondent-Ganesh Singh Rana and tried to conduct a search. He was duly informed of his right of being searched before a Gazatted Officer or a Magistrate as required under section 50 of the Act but he declined that offer. On conducting search of the respondent, about 1½ kg Charas was recovered from his possession. The matter was investigated and a chargesheet was submitted against the respondent. Learned trial court after appreciating the evidence acquitted the accused. Feeling aggrieved by this, the State has preferred the present application for leave to appeal.

3. It is evident from the record that 180 gram of the sample taken from the seized article was sent for

chemical examination and this fact has been indicated in Ex.ka.1. Jasbir Singh Pundir (PW4) appeared before the court and stated that only 100 grams of Charas was taken for chemical examination. Whereas Jodh Singh (PW2), who was the other witness of the raiding party, has stated that 150 grams of charas was sent for chemical examination. Report of the chemical examiner (Ex.ka.8) shows that it was 50 grams only. The prosecution has not adduced the connecting evidence by which it could be established that the article, which was recovered from the possession of the respondent, was admitted in the 'malkhana' and the same article was produced before the court. The trial court has noticed a glaring contradiction in the seal also. The evidence of Krishan Pal Singh (PW5) reveals that the contraband, which was sent to the chemical examiner, contained the seal of Uttaranchal police. Ex.ka.6 shows that it contains the seal having an impression of 'UPP'. The trail court has observed that Krishan Pal Singh (PW5) had stated in his evidence that he has only taken the sample of contraband to Public Analyst, Agra and no other thing was sent to the chemical examiner. This fact reveals that the seal of the sample was not sent alongwith the sample.

4) The provisions of N.D.P.S. Act provide that if the law is stringent then it is required from the prosecution to establish each and every fact beyond reasonable doubt. Thus, the prosecution has failed to prove that the same article which was recovered from the possession of the appellant was produced before the court and the same article was sent to the chemical examiner. The trial court has relied upon a decision of

the Hon'ble Supreme Court in **R. J. Awasthi Vs. State of Goa 2005(1) C.C.S.C. p/36.**

5. In view of the above, I find that the trial court has rightly acquitted the respondent by a reasoned judgment and there is no infirmity in the impugned judgment. I am completely in agreement with the findings recorded by the court below. Therefore, the leave to appeal is hereby rejected.

(J.C.S. RAWAT, J.)

Dated 19.04.2006
LSR